



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ambel Precision Manufacturing

File: B-227996

Date: November 23, 1987

DIGEST

1. Allegation that the agency improperly awarded contract based on waiver of first article test requirement is without merit where, although awardee has items in stock for which deviations were waived under prior contract, record shows deviations were not material and agency states that it will not determine under the subject contract acceptability of particular deviations until the first article is submitted for testing.

2. Fact that only one firm ultimately proves able to offer acceptable delivery schedule because the firm has possibly acceptable items in stock is not an unfair competitive advantage that the agency must eliminate since it did not result from preferential treatment by agency.

3. Solicitation is not unduly restrictive merely because only one firm realistically is able to compete, where solicitation reflects agency's legitimate needs.

DECISION

Ambel Precision Manufacturing protests the award of a contract to Accurate Products Company under the Department of the Army request for quotations (RFQ) No. DAAJ09-87-Q-3345, for the production of helicopter engine parts. Ambel asserts that the Army violated applicable law and regulations by (1) not informing all offerors that the first article test contained in the solicitation could be waived; (2) unduly limiting competition; and (3) selecting an awardee offering items not in conformance with the RFQ and whose performance likely would not comply with the contract terms.

We deny the protest.

The RFQ sought offers for 2,200 sets of centrifugal cases, which are replacement parts required for the Army's emergency program to rebuild several thousand AVCO-Lycoming turbine helicopter engines. The RFQ stated that the metal

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castings from which the centrifugals cases were to be manufactured had to be obtained from either of two approved sources, Precision Founders Inc. (PFI) or Precision Cast Parts Corp. (PCC), and that award would be based on best delivery, with price a secondary evaluation factor in case of a tie. The Army had determined that unless it received 300 of the centrifugal cases per month, commencing on October 1, its rebuild line would have to shut down at a cost of \$64,000 per day. Ambel submitted alternate quotes based on its obtaining castings from each of the approved casting sources. While Ambel's best unit price was \$382 lower than Accurate's, neither of Ambel's offers promised the desired initial delivery rate of 300 units per month. Accurate did offer such a deliver schedule, and the Army thus awarded the contract to Accurate.

Ambel alleges that the award to Accurate essentially represented an improper waiver of the RFQ's requirement for first article testing for the castings Accurate would use in manufacturing the centrifugal. According to Ambel, Accurate had in its inventory a stock of PFI castings the firm obtained in connection with a prior contract, under which, Ambel contends, the Army had waived deviations from specifications in the PFI castings. Ambel concludes that, absent a similar waiver for the castings under the current contract, Accurate would not have been able to offer to comply with the Army's delivery schedule. Ambel claims that, had it known the first article testing requirement for the castings would be waived, it too could have based its quote on the use of PFI material deviating from the specifications (rather than, as reflected in its quote, castings "built-to-print"), and therefore could have offered a more competitive delivery schedule.^{1/}

Ambel is correct that when the government relaxes its requirements, either before or after the receipt of offers, it generally is required to afford all offerors an opportunity to respond to the revised requirements. See DataVault Corp., B-223937, et al., Nov. 20, 1986, 86-2 CPD ¶ 594. Ambel incorrectly construes the facts here, however, as indicating that the Army changed its requirements.

First, the record clearly indicates that the Army did not waive first article testing for the centrifugals cases to be produced by Accurate using castings obtained under the prior contract. Under that contract, the Army merely waived what Army engineers determined to be minor outer dimensional

^{1/} Ambel states that its longer delivery schedule reflected a delay by PFI to retool to correct the deviations in its castings from the prior contract.

deviations in the first article that did not affect the form, fit, or function of the castings; the Army did not waive material contract requirements.

Similarly, there is nothing in the record to indicate that the Army either promised to grant waivers for deviations in Accurate's first article with respect to the present award or, indeed, that it made the award to Accurate only because of its inventory of PFI castings. Accurate's offer stated that the firm had an inventory of castings from both PFI and PCC, and it appears that the Army simply made the award to the firm that promised the best delivery schedule, the very basis for award set forth in the RFQ. While the Army may be inclined to grant waivers of nonmaterial first article deviations as it did under Accurate's prior contract, the Army states that it would not make any such determination until the first article is presented for testing. Therefore, to the extent that Accurate's promised delivery schedule may have depended on the Army accepting specification deviations in the first article, Accurate assumed the risk that the Army would insist on strict compliance with the RFQ's specifications; the same risk was available to Ambel and other offerors.

Furthermore, the possibility of obtaining waivers for minor first article deviations was not, as Ambel suggests, undisclosed. As one of several qualified sources for purposes of the solicitation, Ambel had been provided the technical data package that included specific guidance on requesting such waivers. The record also clearly indicates that Ambel knew, prior to submitting its best and final offer, of the waivers the Army had granted under prior contracts with respect to the PFI castings. We conclude that the Army did not waive the first article test requirement for Accurate; that the possibility of a waiver of nonmaterial first article deviations from the specifications was no different for Accurate than it was for Ambel and other offerors; and that the Army properly awarded a contract based on the advertised basis for award.

We also note that Ambel has not shown how it could have matched or bettered the delivery schedule offered by Accurate even had the Army specifically informed Ambel that it would waive the same deviations allegedly present in Accurate's in-stock castings. To the contrary, it seems neither of the two approved casting sources could have provided Ambel with castings--whether or not deviating--rapidly enough, in sufficient quantities, and at a low enough cost to better Accurate's delivery schedule. Specifically, with the use of PFI castings, Ambel offered first article delivery 70 days after receipt of order (ARO), initial production delivery of 115 units 182 days ARO, and

delivery of a second lot of 300 units 212 days ARO.^{2/} Accurate, on the other hand, promised first article delivery 23 days ARO, and delivery of 300 centrifugals per month starting 70 days ARO. Even assuming Ambel could deliver its first article on the same date as Accurate (seemingly eliminating the delay attributed to PFI's need to retool to eliminate deviations), Ambel's best estimate of the time required to deliver the first 300-unit production quantities is 95 days longer than Accurate's. At the Army's estimated cost of \$64,000 per day, the delay would be more than offset Accurate's \$382 higher unit cost. See DataVault Corp., B-223937, et al., supra.

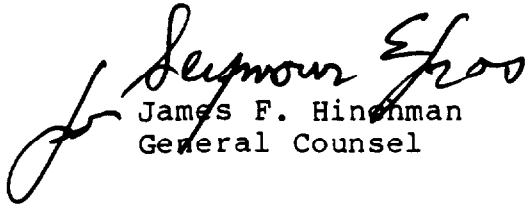
We also reject Ambel's assertion that the Army unfairly restricted competition, which seems to be based on the reasoning that because only Accurate was in a position to meet the desired delivery schedule (because it had a stock of castings on hand), Accurate had an implicit advantage over all other offerors. This argument is without merit. First, the fact that one firm may have access to material produced under a prior contract is not an unfair or improper competitive advantage that must be eliminated by the government. See, e.g., State Machine Products, B-224260, Feb. 5 1987, 87-1 CPD ¶ 123. Moreover, the Army was not required to forego its legitimate needs for the purpose of broadening the competition. It is undisputed that the Army had a need--due to the high daily cost of delay--for prompt delivery, and by putting all offerors on notice of this requirement, the Army afforded all offerors an equal opportunity to meet the requirement within their own business limitations. The fact that only one firm ultimately was able to offer an acceptable delivery schedule does not evidence an improperly restrictive solicitation. See Folk Construction Co., Inc., B-225560, Feb. 12, 1987, 87-1 CPD ¶ 157.

Ambel also contends that Accurate cannot perform under the contract in accord with the specifications and its offered delivery schedule. This argument concerns the agency's affirmative determination of Accurate's responsibility, a determination our Office will not review where, as here, there has been no showing of possible fraud on the part of the contracting officials or an allegation of misapplication of definitive responsibility criteria. See Standard Manufacturing Co., B-218914.3, Aug. 14, 1985, 85-2 CPD ¶ 170. In addition, whether Accurate ultimately complies with the requirements of the contract is a matter of

^{2/} Using the PCC castings, Ambel's delivery schedule was faster, but still not better than Accurate's, and its price was slightly higher than Accurate's.

contract administration, which is within the ambit of the contracting agency and not subject to review under our bid protest function. Id.

The protest is denied.

James F. Hinchman
General Counsel